

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)	
Expanding the Economic and Innovation)	Docket No. 12-268
Opportunities of Spectrum)	
Through Incentive Auctions)	

LPTV Spectrum Rights Coalition
Digital Data Services Act Presentation

September 17, 2013

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September 17, 2013

Marlene H. Dortch, Secretary
Federal Communications Commission
445 Twelfth St, S.W.
Washington, DC 20554

Re: *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions, GN Docket No. 12-268*

Dear Ms. Dortch:

The LPTV Spectrum Rights Coalition “the Coalition” represents FCC broadcast licensee members holding more than 557 LPTV licenses and construction permits in 32 states. The Coalition is a cross-section of the 6400+ LPTV holders, nearly evenly split between licensed LPTV digital TV stations, construction permits, and TV translator facilities; and we number close to 100 private and public organizations. Collectively the Coalition members air hundreds of local and national culturally diverse channels of content, reaching over 50 million viewers.

Several of the Coalition members have LPTV broadcast licenses that are qualified under the LPTV Digital Data Services Act (DDSA)¹. This ex parte letter is intended to alert the FCC Spectrum Auction Task Force that the rights the DDSA licensees were granted in 2000, and the Order On Reconsideration implementing the provisions of the DDSA in 2002, are still in effect and need to be protected during the Voluntary Incentive Auction and channel repacking process.

¹ P.L. 106-554, 114 Stat. 4577 (December 21, 2000), Consolidated Appropriations—FY 2001, Section 143, amending Section 336 of the Communications Act of 1934, as amended, 47 U.S.C. § 336, to add new subsection (h).

To quote directly from FCC 01-137:

“The DDSA mandates that the Commission issue regulations establishing a pilot project pursuant to which specified Low Power Television (LPTV) licensees or permittees can provide digital data services to demonstrate the feasibility of using low-power television stations to provide high-speed wireless digital data service, including Internet access, to unserved areas.² As defined by the new law, digital data service includes: (1) digitally-based interactive broadcast service; and (2) wireless Internet access.³ The DDSA identifies twelve specific LPTV stations that are eligible to participate in this pilot project, and directs the Commission to select a station and repeaters to be determined by the FCC to provide service to specified areas in Alaska....

The DDSA specifies twelve LPTV stations eligible to participate in the pilot project. These are: KHLM-LP, Houston, Texas; WTAM-LP, Tampa, Florida; WWRJ-LP, Jacksonville, Florida; WVBG-LP, Albany, New York; KHHI-LP, Honolulu, Hawaii; KPHE-LP (K19DD), Phoenix, Arizona; K34FI, Bozeman, Montana; K65GZ, Bozeman, Montana; WXOB-LP, Richmond, Virginia; WIIW-LP, Nashville, Tennessee; WSPY-LP, Plano, Illinois; and W24AJ, Aurora, Illinois. The DDSA also includes in the LPTV stations eligible to participate in the pilot project a station and repeaters to be determined by the Federal Communications Commission for the sole purpose of providing service to communities in the Kenai Peninsula Borough and Matanuska Susitna Borough in Alaska.⁴ We invite LPTV stations in these locations to come forward and present their proposals to commence such a pilot project.”

During the ensuing twelve years since the Act was passed, the FCC has initiated the digital television transition, and the LPTV service is not scheduled to complete the transition until September 2015. There have also been dramatic changes and improvements in the digital data and Internet services marketplace, which has created the technological infrastructure to successfully experiment and implement the DDSA.

The Congress and the Commission are now undertaking the Voluntary Incentive Auction, which will dramatically reduce the UHF spectrum available to implement the DDSA. The use of the VHF spectrum for this type of interactive data service is not feasible, so the Coalition requests that the Commission provide a mechanism to ensure that this pilot project may finally be initiated with modern technology within the UHF spectrum. The Coalition believes that Congress, in passing the DDSA,

² P.L. 106-554, 114 Stat. 4577 (December 21, 2000), Consolidated Appropriations—FY 2001, Section 143, amending Section 336 of the Communications Act of 1934, as amended, 47 U.S.C. § 336, to add new subsection (h).

³ 47 U.S.C. § 336(h)(7).

⁴ 47 U.S.C. § 336(h)(2).

requires the FCC to accept any alternative transmission standard for the DDSA licensees, as long they maintain the proper interference protections as required by the LPTV service. The DDSA, and the subsequent 2002 Order of Reconsideration⁵, detail that:

“Pilot project stations will operate pursuant to their LPTV licenses instead of experimental letter authorizations. To obtain a waiver of Section 74.731(g), pilot project-eligible stations should follow the application procedures specified in paragraph 8 of the *Implementation Order*. Rather than filing an application for experimental authority, a DDSA eligible applicant should file an informal letter application requesting the addition of digital data service pilot project facilities to its existing LPTV authorization and including the information requested in that paragraph.”⁶

The Coalition suggests that the Commission accommodate the DDSA licensees in the post-auction channel repacking process by providing them with both a priority in the repacking, and a priority for any mutual displacement applications. A UHF assignment would most likely be available in each DDSA DMA, but it would not be guaranteed and would need to be done on a competitive filing basis. The Coalition believes that the Commission has an obligation to maintain an acceptable UHF assignment to ensure the minimal opportunity for the DDSA to be implemented during the post-auction channel repacking.

The Coalition views the limited number of licensees (12), their respective DMAs (5, 10, 13, 14, 29, 50, 57, 58, 71, 189, 206), and the current potential population coverage (about 35 million) as a special case situation, and that it would be an excellent use of deploying alternative transmission methods, especially to meet the National Broadband Plan objectives. The DDSA licensees will vary in their decisions to elect to participate further in the pilot project in the post-auction channel repacking. Some are Class-A licensees, making them spectrum auction eligible, and may choose to participate in the auction, while most LPTV and TX may not.

The Coalition understands that the DDSA licensees need to follow whatever the Commission LPTV rules are at the time of their notification to the FCC to begin their pilot projects. We do however

⁵ FCC 02-40

⁶ FCC 02-40 II A (6) pg. 3

believe that the Commission needs to provide some accommodation to them in the post-auction channel repacking so that they may conduct their pilot projects within the UHF frequencies, and not be forcibly re-assigned to a VHF channel.

We have attached the 2002 FCC Order (FCC 02-40), so that the reader has a full understanding of what is entailed in this issue. The DDSA licensees are empowered by an Act of Congress to implement two-way digital data services, and twelve years after obtaining that status, both the technology and the marketplace have finally caught up to their innovative potential uses. The accommodation and implementation of their rights and advanced services may hold the key to future digital data services for all LPTV licensees.

The Coalition does not formally represent all of the DDSA licensees, and we have not talked with many of them about this issue, so our comments and recommendations may not be an accurate reflection of this entire class of licensees. The Coalition has however, attempted to summarize the problems and solutions in a simple fashion so that the Task Force and Commission can accommodate the twelve eligible DDSA LPTV licensees.

Congress, through the Act, and the FCC, through its 2002 Order of Reconsideration, plainly state that there was no time limit placed on the DDSA eligible licensees, that the pilot project lasted as long as their licenses and renewals were valid, that they needed to follow the current LPTV rules, and that a simple informal letter notification is all that they need to file. The Coalition believes that a UHF channel assignment is necessary for the DDSA eligible licensees to succeed, and that the use of a priority in the LPTV channel repacking and in mutual displacement application filing is warranted, and would adhere to the intent of both the Voluntary Incentive Auction and the DDSA.

Respectfully submitted,

_____/S/____

Mike Gravino
Director